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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Roxanne B McQueen,

10 Plaintiff,

11 v.

12 MetLife Auto & Home, et al.,

13 Defendants.
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No. CV-22-01018-PHX-DLR

ORDER

15 Before the Court is Defendant Farmers Insurance Group's motion to dismiss
16 (Doc. 21) and Plaintiff Roxanne McQueen's related motion for leave to amend (Doc. 41).
17 Both are fully briefed.¹ For the following reasons, Farmers Insurance Group's motion is
18 granted, and Plaintiff's motion is denied without prejudice.

19 **I. Background**

20 This case arises from an insurance claim following a car accident involving Plaintiff,
21 her minor daughter, and an underinsured motorist. (*See* Doc. 20.) On April 25, 2021,
22 Plaintiff was driving her car with her daughter as a passenger when an underinsured
23 motorist t-boned her vehicle, seriously injuring Plaintiff and her daughter. (*Id.* ¶¶ 16–18.)
24 The underinsured motorist's insurance carrier, GEICO, paid Plaintiff its policy limit of
25 \$100,000. (*Id.* ¶ 25.) Plaintiff held an active automobile insurance policy with Defendant
26 Metropolitan Group Property and Casualty Insurance Company ("MetLife"). (*Id.* ¶ 11.)

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28 ¹ Oral argument is denied because the motions are adequately briefed, and oral
argument will not help the Court resolve the issues presented. *See* Fed. R. Civ. P. 78(b);
LRCiv. 7.2(f).

1 Plaintiff filed a claim with MetLife for Underinsured Motorist Coverage, claiming she was
2 inadequately compensated by the underinsured motorist's policy payout. (*Id.* ¶¶ 27, 39.)

3 Plaintiff claims that, as of April 7, 2021, Farmers Insurance Group acquired
4 MetLife's home and auto policies, including her own, and assumed responsibility for those
5 policies. (*Id.* ¶¶ 28–32.) Accordingly, it was a Farmers Insurance Group adjuster, rather
6 than a MetLife adjuster, who allegedly adjusted and ultimately denied Plaintiff's claim for
7 Underinsured Motorist Coverage. (*Id.* ¶¶ 33–34, 43.) Plaintiff alleges that Defendants
8 “failed to properly evaluate and investigate Plaintiff's . . . damages from th[e] collision.”
9 (*Id.* ¶ 38.) If Defendants had done so, Plaintiff claims, they would have “fully
10 compensate[d]” Plaintiff for her damages. (*Id.* ¶ 40.)

11 Following the claim denial and unsuccessful settlement negotiation, Plaintiff filed
12 this action against Defendants in state court. Defendants removed the action on diversity
13 jurisdiction, bringing the matter before this Court. Plaintiff asserts breach of contract and
14 bad faith claims. (*Id.* ¶¶ 50–71.) Farmers Insurance Group has moved to dismiss the claims
15 against it, arguing it is merely a federally registered service mark and thus a non-jural
16 entity. (Doc. 21.) Even if it could be subject to suit, Farmers Insurance Group asserts that
17 Plaintiff failed to state a claim against any Farmers entity because she contracted with—
18 and could only recover damages from—MetLife, not Farmers. (*Id.* at 4–5.)

19 Plaintiff subsequently filed a motion requesting leave to amend.² (Doc. 41.) The
20 parties agree that amending the complaint to remove Plaintiff's minor child as a plaintiff

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22 ² Paragraph 3 of the Court's standard order issue on June 14, 2022 requires a party
23 who responds to a motion to dismiss with a request, in the alternative, for leave to amend
24 to “submit, no later than the time Plaintiff files a response to the motion, a proposed
25 amended complaint that complies with LRCiv. 15.1(a) and contains all further allegations
26 Plaintiff could make. In the event a motion to dismiss . . . is granted in any part, no leave
27 to amend the complaint will be granted beyond what is offered in the proposed amended
28 complaint.” The purpose of this order is to streamline the process and to ensure that drive-
by, one-sentence requests for leave to amend added to the conclusion of a response in
opposition to a motion to dismiss comport with LRCiv. 15.1(a). Here, Plaintiff included
such a drive-by request in the last sentence of her response in opposition to Farmers
Insurance Group's motion to dismiss (Doc. 28 at 11) but did not comply with the Court's
order by submitting a proposed amended pleading at that time. Instead, Plaintiff waited a
month after the close of briefing on the motion to dismiss to file her motion for leave to
amend and the accompanying proposed amended pleading. The Court reminds all parties
to review the Court's order and to take care to comply in the future.

1 is appropriate. (Doc. 46 at 8.) The disagreement stems from Plaintiff’s proposal to remove
 2 Farmers Insurance Group as a defendant and instead assert her breach of contract claim
 3 against Farmers Group Property and Casualty Insurance Company (aka Metropolitan
 4 Group Property and Casualty Insurance Company) (“Farmers P & C”) and her breach of
 5 contract and bad faith claims against Farmers Insurance Exchange (“FIE”). (Doc. 43; Doc.
 6 41-1.)

7 **II. Motion to Dismiss**

8 Dismissal of a complaint is appropriate when a plaintiff fails to “state a claim to
 9 relief that is plausible on its face.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570
 10 (2007). “A claim has facial plausibility when the plaintiff pleads factual content that allows
 11 the court to draw the reasonable inference that the defendant is liable for the misconduct
 12 alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

13 To state a claim for breach of contract, “the Plaintiff must plead facts alleging (1) a
 14 contract exists between the plaintiff and defendant; (2) the defendant breached the contract;
 15 and (3) the breach resulted in damage to the plaintiff.” *Hannibal-Fisher v. Grand Canyon*
 16 *University*, 523 F. Supp. 3d 1087, 1093 (D. Ariz. 2021) (quotation and citation omitted).
 17 Farmers Insurance Group contends, and Plaintiff does not dispute, that it is a federally
 18 registered service mark owned by Farmers Insurance Exchange, an inter-insurance
 19 exchange. (Doc. 3 at 3.) A service mark essentially is a trademark for services. *Service*
 20 *Mark*, *Black’s Law Dictionary* (11th ed. 2019). It is not a jural entity. Because a service
 21 mark lacks the capacity to contract, to sue, and to be sued, Plaintiff has not stated a plausible
 22 claim against Farmers Insurance Group. The motion to dismiss therefore is granted.

23 **III. Motion for Leave to Amend**

24 Leave to amend should be granted “when justice so requires.” Fed. R. Civ. P.
 25 15(a)(2). In deciding whether to grant leave to amend, the Court considers several factors,
 26 including: “(1) bad faith, (2) undue delay, (3) prejudice to the opposing party, (4) futility
 27 of amendment; and (5) whether plaintiff has previously amended his complaint.” *Allens v.*
 28 *City of Beverly Hills*, 911 F.2d 367, 373 (9th Cir. 1990). “Leave to amend may be denied

1 if the proposed amendment is futile or would be subject to dismissal.” *Wheeler v. City of*
2 *Santa Clara*, 894 F.3d 1046, 1059 (9th Cir. 2018).

3 Plaintiff has amended her complaint once previously. (*See* Doc. 20.) Still, the Court
4 finds no evidence of bad faith, undue delay, or prejudice. Because the defect in Plaintiff’s
5 operative complaint is merely a misnomer (the naming of a service mark rather than a jural
6 Farmers entity), leave to amend would typically be granted. *See Simon v. Maricopa Med.*
7 *Ctr.*, 234 P.3d 623, 628–29 (Ariz. Ct. App. 2010). Farmers Insurance Group argues,
8 however, the proposed amendment is futile because no Farmers entity may properly be
9 sued here. It therefore is necessary for the Court to understand the nature of the Farmers
10 entities Plaintiff wishes to sue, and their relationship to her insurance contract.

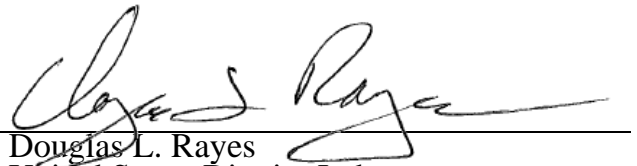
11 Unfortunately, Plaintiff confuses the entities and leaves the Court unable to make
12 these determinations. In her motion and proposed amended pleading, Plaintiff claims that
13 Farmers P & C is a proper defendant because MetLife changed its name to Farmers P & C.
14 (Doc. 41 at 1; Doc 41-1 at ¶¶ 3, 8.) In the same breath, however, Plaintiff asserts that
15 Farmers P & C acquired MetLife. (Doc. 41-1 at ¶ 8.) At other points, she suggests that
16 MetLife still exists and remains a separate entity. (*Id.* ¶ 39; Doc. 41 at 4.) Additionally, in
17 her motion, Plaintiff characterizes FIE as a subsidiary of Farmers P & C (Doc. 41 at 4), but
18 her proposed amended pleading states that Farmers P & C is a wholly owned subsidiary of
19 a (presumably distinct) entity called Farmers Property and Casualty Insurance Company,
20 which is itself a direct, wholly owned subsidiary of FIE. (Doc 41-1 at ¶ 2.) It consequently
21 is unclear which corporate veil Plaintiff is attempting to pierce.

22 Given these discrepancies and internal contradictions, the Court cannot adequately
23 discern exactly what entities Plaintiff is suing and how she claims they are related to her
24 insurance contract. The Court therefore will deny Plaintiff’s motion for leave to amend
25 without prejudice to her submitting a new motion and proposed amended pleading that
26 corrects these discrepancies and internal contradictions so that the Court may properly
27 evaluate whether she is suing a Farmers entity with a sufficient connection to her insurance
28 contract.

1 **IT IS ORDERED** that Farmers Insurance Group's motion to dismiss (Doc. 21) is
2 **GRANTED**. Farmers Insurance Group is dismissed from this action.

3 **IT IS FURTHER ORDERED** that Plaintiff's motion for leave to amend (Doc. 41)
4 is **DENIED** without prejudice to Plaintiff renewing her motion in a manner that addresses
5 the discrepancies identified in this order.

6 Dated this 14th day of March, 2023.

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11 Douglas L. Rayes
12 United States District Judge
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